

**DRAFT**



**Gaithersburg**

*A CHARACTER COUNTS! CITY*

CITY OF GAITHERSBURG

MINUTES OF A REGULAR CITY COUNCIL MEETING

APRIL 3, 2006

---

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Alster, Edens, Marraffa, Schlichting and Sesma. Staff present: City Manager Humpton, Assistant City Managers Felton and Tomasello, Engineering Services Director Mumpower, Planning and Code Administration Director Ossont, Community Planning Director Schwarz, Planner Marsh, Parks, Recreation and Culture Director McGleish, Recreation Program Supervisor Coup, Lieutenant Campbell, Master Police Officer Rice, Environmental Services Director Shingara, City Attorney Borten and Administrative Assistant Stokes.

**I. PLEDGE OF ALLEGIANCE**

The Pledge was led by Ariella and Elan Rice, Gaithersburg, Maryland.

**II. INVOCATION**

The invocation was led by Nazaneen Dorost, Baha'i Faith.

**III. APPROVAL OF MINUTES**

Motion was made by Council Member Alster, seconded by Council Member Sesma, that the minutes of the Mayor and Council meeting held March 20, 2006, be approved.

Vote: 5-0

**IV. CONSENT ITEMS**

**1. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Three (3) 2006 Chevrolet Trail Blazers**

This resolution authorized the City Manager to enter into a contract for the above purchase with Criswell Chevrolet, 503 Quince Orchard Road, Gaithersburg, Maryland 20878, in the amount of Fifty-Nine Thousand Seven Hundred Twenty-Seven Dollars (\$59,727); said funds to be expended from the Operating Budget.

**2. Resolution of the Mayor and City Council Correcting the Expiration Term Date of Planning Commissioner Kaufman**

This resolution corrected Resolution No. R-27-06 adopted on March 20, 2006 and confirmed the appointment of Lloyd Kaufman, 405 Firehouse Lane, Gaithersburg, Maryland 20878, term to expire September 2009.

Motion was made by Council Member Alster, seconded by Council Member Sesma that the Consent Agenda (Resolution Nos. R-32-06 and R-33-06), be approved.

Vote: 5-0

**V. APPOINTMENTS****Resolution of the City Council Confirming a Reappointment by the Mayor to the Planning Commission – *Leonard Levy***

Mayor Katz and City Council Members each commented on their interview involvement of the eleven qualified candidates, clarified remarks and their vote to fill the vacant Planning Commission position and the reappointment of Planning Commissioner Levy.

Council Vice President Schlichting stated that he favored candidates with some level of planning expertise and felt that one candidate had more specific expertise and did not support the Mayor's nomination of Mr. Levy, but welcomed him back to the Planning Commission.

Mayor Katz clarified that the incumbent applying for reappointment is not just judged on what is said during the interview process, but their history of service. He stated that the decision was not easy because of the well qualified candidates, but those involved in the interview process walked away with different opinions.

Council Member Marraffa expressed disappointment on the comments in the newspapers and emails received stating that the Mayor and City Council conspired behind close doors on the vote. He stated that the Mayor and City Council has always had the best interest of the City and its citizens when voting on a matter before them.

Council Member Edens stated that the situation was extremely unfortunate and should never have happened. Asked that the interview process be improved, but reminded all that the nomination is the choice of the Mayor and if there is disagreement on that nomination, then it should be communicated to the Mayor.

Council Member Alster stated it was unusual that there was not a second on the motion to reappoint Mr. Levy to the Planning Commission. He stated that he had concerns when the vote was not seconded, and choose to allow the motion to hang and have it come back for re-nomination after it has been resolved. He agreed with residents that the matter was not handled well and stated that it's ok for residents to respectfully express their opinions, but was disappointment in remarks made regarding a conspiracy for the reappointment.

Council Member Sesma expressed remorse for the perception the non-vote on March 20, 2006 meeting created. Stated that the process should be improved to prevent this situation from reoccurring. Stated that his colleagues have not given him any reason to believe that they are not individuals of their word. Thanked all that applied and expressed support for Mr. Levy's reappointment.

Apologies and regrets were expressed regarding the public non-vote without explanation which occurred during the March 20, 2006 meeting. It was reiterated by many members that no private meetings were held to influence their vote and that the City Council has the right to vote for approval or not on the Mayor's nominations.

This resolution confirmed the reappointment of Leonard Levy, 14 Supreme Court, Gaithersburg, Maryland 20878, five-year term, expiring February 2011.

Motion was made by Council Member Sesma, seconded by Council Member Alster, that a RESOLUTION OF THE CITY COUNCIL OF GAITHERSBURG CONFIRMING A REAPPOINTMENT BY THE MAYOR TO THE PLANNING COMMISSION (Resolution No. R-34-06) be approved.

Vote: 3-1-1 (Opposed: Schlichting, Abstained: Marraffa)

**VI. OATH OF OFFICE TO BOARD OF APPEALS MEMBER**

Mayor Katz administered the Oath of Office to Carol Rieg to execute the office of Board of Appeals, according to the Constitution and Laws of the State of Maryland.

**VII. PRESENTATIONS****1. Third Quarter Employee Recognition Awards**

**Dianne Coup**, Parks, Recreation, and Culture, received the Employee Recognition Award for the Third Quarter, December 1, 2005 – February 28, 2006, for performing excellent work on an ongoing basis.

Dianne Coup began her career with the City of Gaithersburg as a part-time employment agreement employee, working hard to earn a full-time position. Through the years, her dedication to excellence has been evident in numerous programs and events such *Bark in the Park*, *Celebrate Gaithersburg in Olde Towne*, and *Winter Lights*. Last year, she volunteered to take on the organizing and planning of the annual City Employee Picnic. Dianne has maintained and shown an outstanding work ethic, dedication to excellence, creativity, and unselfishness during her employment with the City.

**2. Proclamations**

- **Designating April 2006, as “Arab American Heritage Month”**

The Proclamation recognizes Arab-Americans, their presence, and their contributions to the larger community of Montgomery County. The Arab-American community has organized an official program and dinner event celebrating Arab-American Heritage Month scheduled for Tuesday, April 4, 2006, at the Executive Office Building in Rockville, from 6:30 – 8:30 p.m. Accepting the Proclamation was Samira Hussein.

- **Designating April 6 – June 6, 2006, as “Maryland Chiefs’ Challenge Campaign”**

The 2006 Maryland Chiefs’ Challenge Campaign, a lifesaving campaign, provides communities and organizations with an excellent opportunity to join Maryland’s law enforcement community in their efforts to increase the correct use of safety belts and child safety seats by focusing attention to the lifesaving benefits of these systems. Master Police Officer Rice accepted the Proclamation.

**3. Presentation from Representatives from the Maryland Transit Administration (MTA) Concerning Issues Associated With the Corridor Cities Transitway Alignment and the Proposed Crown Farm Annexation – X-182**

Assistant City Manager Felton introduced the above presentation and gave a brief history on the matter. He stated that during the Fall 2005 Crown Farm Charrette, modification of the proposed Corridor Cities Transitway was discussed at length. The current alignment shows the transitway going diagonally through the property with two transit stations. The proposed modifications show the alignment either parallel to Fields Road or going in the median of Fields Road then bisecting the far along Decoverly Drive. He further stated that the proposed shift would only have one transit station that would serve both the Washingtonian Center and the Crown Farm development.

He stated that there have been a series of meeting with MTA representatives and he publicly thanked them for their assistance with the project. Mr. Felton oriented the Mayor and City Council to the site and showed the various scenarios. He stated that the biggest issue from staff’s perspective is whether it is feasible to run the transitway through the median of Fields or to abut Fields Road.

*Mary Polkiewicz, Maryland Transit Administration*, stated that the administration is continuing to work with City staff to resolve the outstanding issues on the proposed realignment. She stated that the project will be highly scrutinized as it is submitted for consideration of Federal funding. She stated that the cost effective is a measure that is a key factor in determining the eligibility for funds. The measure compares project cost and user benefits such as travel times. She stated that the MTA prefers that the alignment not go through the median of Fields Road because of safety issues. The MTA also expressed concern about maintaining transit travel speeds and minimizing time associated with the longer alignment. She stated that MTA is seeking that the proposed plan works efficiently from the perspective of traffic operation. She further stated that there are additional structural needs related to the realignment and that the felt that the cost be placed on the developer. MTA would like to obtain appropriate public comment on the proposed realignment and new station location and stated that City staff is in the process of arranging a meeting with the Washingtonian community. Additionally, she stated that staff has indicated that it is the developers intent to provide at his cost, a parking garage with 250 spaces dedicated for transit use. MTA is asking that the garage be situated conveniently to the proposed station and be designed to allow future expansion. An additional cost to the developer would be the need of stormwater management. Mitigation of environmental and noise impact related to the transitway is also a concern. MTA estimates that the project would cost approximately 17.6 million more for light rail and 12.4 million more for bus rapid transit. MTA has concerns that the increase in project cost would negatively impact the effectiveness of the project. She reviewed the timetable for the phasing of the project that is contingent on approval of funding.

*Rick Keigel, Maryland Transit Administration*, added that the second station adjacent to Decoverly Drive is proposed to occur and be constructed in the distance future when transit needs justifies it, proposed for 2025. He stated that the second station is not considered in any of the environmental documentation or analysis of the transitway at this point. He stated that the plan is to have the one station, the original at Washingtonian and as relocated at Fields and Decoverly. In response to a question, he stated that MTA would like that the developer to include in the properties adjacent to the transitway noise mitigation construction techniques to minimize the impact associate with the noise. He stated that the transitway as planned by the developer and City staff, would stay above grad on Fields Road as it crosses Washingtonian Blvd intersection and the intersection that would serve the high school. He stated that the MTA is planning to schedule formal public work sessions with the public to receive comments on the impact of the proposed realignment, the Corridor Cities Transitway and the alignment impact associated with the Crown Farm development. MTA has concerns with low ridership and maintenance cost.

The Mayor and City Council expressed concerns and had questions regarding noise analysis, environmental impact associated with the land use, proposed parking, alignment and cost of the Corridor Cities Transitway, cost of light rail versus the bus rapid transit system, responsibility and cost to the developer, and comparisons to the King Farm development. City Manager Humpton questioned the change to the alignment, cost to the developer and other competing projects proposed to the MTA. Staff was directed to continue dialoging with MTA and the developer to resolve the issues raised.

#### **4. Presentation Concerning Recent State Legislation Authorizing Local Governments in Montgomery County to Utilize Photo Radar Enforcement**

Lieutenant Campbell gave a PowerPoint to the Mayor and City Council in regards to the above. He stated that House Bill 443, passed in 2006, authorizing local jurisdictions in Montgomery County to issue citations to drivers for speeding based on recorded images collected by automated speed monitoring systems. A "speed monitoring system" is a device with one or more motor vehicle sensors producing recorded images of motor vehicles traveling at least 10 miles per hour above the posted speed limit.

The Bill applies to speeding violations that occur (1) on a highway in a residential district with a maximum posted speed limit of 35 miles per hour; or (2) in an established school zone. The Bill establishes a maximum civil penalty of \$40.00. The Bill specifies training and record keeping requirements for speed monitoring system operators, including the performance of calibration

checks as specified by the system manufacturer, and an annual calibration performed by an independent laboratory.

A person who receives a citation by mail may pay the specified civil penalty directly to the Montgomery County Department of Finance, or elect to stand trial in District Court. A warning notice may be issued instead of a citation. He further gave information on the Motor Vehicle Administration involvement.

The Bill requires the jurisdiction to use revenues from automated speed enforcement to increase local expenditures for public safety, beginning in fiscal year 2006 and every subsequent year. Related public safety expenditures must be used to supplement and may not supplant existing local expenditures for the same purpose. He concluded by stating that the Montgomery County Council must report to the general assembly on the effectiveness of speed monitoring systems by December 31, 2009.

#### **VIII. COURTESY REVIEW**

##### **SDP-06-001, Casey Property West Metropolitan Grove Proposal to Adjust Lot Lines of Four Lots in Block E, in the North Corner of the Residential Portion**

Planner Marsh oriented the Mayor and City Council with the site showing the roadways and the CTX railroad in location to the site. She stated that the applicant is requesting an amendment to SDP-05-002, Casey West which was approved in August 2005. The applicant is proposing to adjust the lot lines of four lots in Block E, to accommodate the final design of the stormwater management pond to be constructed near Watkins Mill Road. Planner Marsh reviewed the new lot lines. She responded to a question and stated that the total number of units and unit types are the same, only reconfigured.

Motion was made by Council Member Marraffa, seconded by Council Member Alster, directing the Planning Commission to make a final decision on the application as part of the final site plan review of SDP-06-001.

Vote: 5-0

#### **IX. PUBLIC APPEARANCES**

1. *Richard Arkin, 121 Selby Street*, referred to the MTA presentation on the Corridor Cities Transitway. Stated that he supports a lightrail system for Gaithersburg. He expressed concern with MTA's cost benefit analysis, stating it is based on faulty assumptions. He urged the City Council to make the decision on the alignment of the Corridor Cities Transitway and that it be people oriented.
2. *Demos Chrisos*, expressed concern with the process appointing a Planning Commission. Asked that the desired outcome on the Mayor and City Council Agenda Cover Sheet be modified asking the City Council to "Vote on Resolution" instead of "Approve Resolution."

#### **X. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**

##### **Council Member Sesma**

1. Congratulated Planning Commissioner Levy on his reappointment.
2. Announced that a closed executive session was held by the Mayor and City Council of Gaithersburg on Monday, March 27, 2006, at approximately 9 p.m., pursuant to Section 10-508(a)(1)(i) State Government Article of the Annotated Code of Maryland, to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over who it has

jurisdiction. The topic discussed was the performance of Mayor and City Council appointees to the Planning Commission. Present at the meeting were Mayor Katz, Council Vice President Schlichting, Council Members Alster, Edens, Marraffa, Sesma and City staff. The closed meeting was adjourned at approximately 9:40 p.m.

#### **Council Member Marraffa**

Thanked Director of Community Development Kauffmann for preparing letters sent to members of Congress to save Community Development Block Grant Funds.

#### **Council Member Alster**

1. Announced that the City's Skate Park located at Bohrer Park is now open for the season. For more information visit the City's website at [www.gaithersburgmd.gov/skate](http://www.gaithersburgmd.gov/skate) or call 301-258-6350.
2. Reported that the House Committee on Communication and Commerce has made available draft legislation involving the cable franchising, right-of-ways, responsibilities and internet access. He stated that the National League of Cities has expressed concern with the legislation for local jurisdictions. He proposed that letters be sent to Representatives Barton and Wynn expressing the City's concerns.

#### **Council Vice President Schlichting**

1. Announced vacancies on various Boards, Commissions and Committees. He stated that both the Board of Appeals and Planning Commission have an April 20, 2006 deadline to submit letters of interest.

#### **Mayor Katz**

1. Requested the following motion:

Motion was made by Council Member Alster, seconded by Council Member Sesma, that the Mayor and City Council of Gaithersburg conduct a closed executive session on Monday, April 3 2006, immediately following the regular meeting, pursuant to Sec. 10-508(a)(7) State Government Article of the Annotated Code of Maryland. The topic(s) to be discussed is the legal issues related to the Crown Farm Annexation Agreement. Pursuant to Sec. 10-508(a)(3), State Government Article of the Annotated Code of Maryland, the City Council will also discuss a property acquisition matter related to the Olde Towne Plan.

Vote: 5-0

2. Announced the City will conduct a work session on Monday, April 10, 2006, to receive a final report from the Gaithersburg Day Laborer Task Force.

### **XI. FROM THE CITY MANAGER**

#### **• Day Laborer Task Force**

Reported that the group is finalizing their recommendations for presentation at the April 10, 2006 work session. Announced that the report will be available to the Mayor and City Council, media and public on Thursday, April 6, 2006.

**XII. ORDINANCES AND RESOLUTIONS****Resolution Approving a Waiver of the Environmental Standards for Development Regulation**

Environmental Services Director Shingara stated the applicant is requesting a waiver to allow approximately 3,018 square feet of disturbance within the stream valley buffer at 100 Central Avenue (Rashidian Estates). She stated that the applicant VNT Construction obtained concept plan approval for CSP-01-002 on February 20, 2002. She added that in order to proceed with the site plan review process, the applicant must first obtain approval of an environmental waiver from the Mayor and City Council, as required by the Environmental Standards for Development Regulation. Environmental Services Director Shingara oriented the Mayor and City Council to the site. The proposed waiver is to accommodate stormwater management for the proposed Rashidian Estates project which consists of the development of three (3) single-family units on the property.

Motion was made by Council Member Edens, seconded by Council Member Schlichting, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL APPROVING A WAIVER OF THE ENVIRONMENTAL STANDARDS FOR DEVELOPMENT REGULATION TO ALLOW 3,018 SQUARE FEET OF DISTURBANCE WITHIN THE STREAM VALLEY BUFFER AT 100 CENTRAL AVENUE (Resolution No. R-35-06), be approved.

Vote: 5-0

**XIII. POLICY DISCUSSION****An Emergency Ordinance to Amend Chapter 15 of the City Code, Entitled "Offenses-Miscellaneous", to Create a New Section 15-18 Entitled "Picketing at a Private Residence", so as to Prohibit Picketing at a Private Residence Under Certain Circumstances**

Assistant City Manager Felton stated that the above Ordinance was introduced on March 6, 2006 and a public hearing was held on March 20, 2006, with a number of speakers from the public both in favor and in opposition. Pursuant to Section 32-23 of the Montgomery County Code, it is unlawful to picket in front of or adjacent to a private residence; however, Chapter 32 of the County Code is not applicable in the City of Gaithersburg. He further stated that the City received correspondences since the public hearing. The record on the above closed on March 29, 2006. Staff recommended that the City Council vote on the Ordinance to amend Chapter 15 of the City Code. He added that the emergency Ordinance would go into effect immediately, if approved.

Motion was made by Council Member Alster, seconded by Council Member Marraffa, that the above Ordinance (Ordinance No. O-3-06) be adopted.

Vote: 5-0

**XIV. FROM STAFF****Assistant City Manager Felton**

Announced that the Mayor and City Council record on SDP-05-006, Washingtonian South, closed March 1, 2006 and Policy Discussion was held on March 20, 2006. Several City Council Members indicated at the Policy Discussion that they were in opposition to residential development for the project. He stated that the applicant is seeking guidance on whether or not the City wishes to consider age restricted housing for the project, if not, the applicant has requested the opportunity to withdraw the application rather than be denied.

Council Vice President Schlichting mentioned that the Planning Commission recommended denial of the plan as is because it did not comply with the City's Master Plan. Several City Council expressed opposition to any modification of the plan for residential housing and asked for office use. The Mayor and City Council asked that the applicant submit a formal request to withdraw the plan.

**XV. ADJOURNMENT**

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:15 p.m.

Respectfully submitted,

*Doris R. Stokes*

Doris R. Stokes  
Administrative Assistant